IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Review No: 3 of 2007

Judgment reserved on:17.8.2007

Date of decision: 21.9.2007

H.P. State Electricity Board **Petitioner**

Versus

M/s SAB Industries Ltd. **Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. K.D.Sood, Advocate

For the Respondents: Mr. P.S.Rana, Advocate, with
Mr. Karan Singh Kanwar, Advocate.

Deepak Gupta, J.

This review petition has been filed by the H.P. State Electricity Board (hereinafter referred to as the Board) for recalling/correcting the judgment delivered by this court in four connected matters, especially in Arbitration Case 2 of 2002.

The brief facts are that a contract was awarded by the Board in favour of the respondent M/s SAB Industries for execution of the GAJ Hydel Project.

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Disputes having arisen between the parties, the same were referred for decision to an arbitrator. Various awards were passed and the parties filed objections in four awards. One of the objections was registered as Arbitration Case No. 2 of 2002. All the four cases were taken up together as they involved similar questions of law.

One of the main questions which arose for decision in all the cases was whether the arbitrator was right in awarding escalation by taking into account notification of the Board dated 3.6.1995 relating to increase of the minimum wages. This court passed a detailed judgment holding that the award of the arbitrator in this regard was incorrect and it was specifically stated in all the cases that the arbitrator was not justified in awarding escalation on the basis of the notification dated 7.6.1995. While deciding Arbitration Case No. 2 of 2002 this court after considering the entire law and contentions of the parties came to the conclusion that in view of the judgment of the Division Bench of this court in M/s Hydel Construction Vs. H.P.S.E.B. 1999 (3) SLC 10 the award of the arbitrator awarding escalation on the basis of the notification dated 7.6.1995 is not only against law laid

down by this court, but is also based on no evidence. However, in the concluding paragraph this court held that the arbitrator was not justified in awarding escalation on claims No. 3 and 4 by taking into account the notification dated 7.6.1995 since this was not a notification fixing minimum wages as per Minimum Wages Act as clearly laid down in M/s Hydel Construction case, supra. It was clearly held that the award in respect of claims No. 3 & 4 in so far it relates to escalation of minimum wages on account of the notification dated 7.6.1995 is set aside. While dealing with Arbitration Case No. 2 of 2000 this court overlooked the contentions raised in respect of claim No. 2. Under claim No. 2 the arbitrator had awarded a sum of Rs. 50,11,087/- in favour of the contractor. This entire amount was awarded on the basis of the escalation calculated as per notification dated 1.10.1995. The Board by, means of this petition, has prayed that in view of the clear-cut findings given by this court that the arbitrator had no jurisdiction to award escalation on the basis of this notification, the award made under claim No. 2 be also set aside.

On behalf of the contractor it is urged that this court has no jurisdiction to review its orders and the

Arbitration and Conciliation Act, 1996 does not contemplate the filing of a review petition.

I have heard Mr.K.D.Sood, learned counsel for the Board and Mr. P.S.Rana, learned counsel, for the contractor.

Learned counsel for the petitioner has urged that the mistake which has occurred in the judgment is basically a clerical mistake. The legal issue had already been decided in detail while dealing with OMP(M) No. 15 of 2000. Thereafter while dealing with other cases, including Arbitration Case No. 2 of 2002, this court was following the law already laid down and it is only a clerical mistake that no reference has been made to claim No. 2. It is further argued that the procedure provided in the Civil Procedure Code in regard to suits is applicable only to all proceedings in any court of civil jurisdiction except proceeding under Article 226 of the Constitution. Mr. Sood, therefore, urges that correction/rectification of the orders can be done in terms of Sections 151, 152 of the Civil Procedure Code. On the other hand, Mr. P.S.Rana, Advocate, has strenuously contended that the Arbitration and Conciliation Act, 1996 is a complete code in itself and

since there is no provision in the Act for review, this court has no power to exercise jurisdiction to review its orders.

Section 2(e) of the Arbitration and Conciliation Act defines "Court" as follows:-

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> 2(e) "Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small Causes;"

An award made by the arbitrator can only be challenged under Section 34 of the said Act. The Act nowhere lays down the procedure, to be followed by the court while dealing with the objections filed under Section 34 of the Act.

The High Court has been given the power to make rules consistent with the Act under Section 82 of the Act. The Central Government has also been given powers to frame rules under Section 84 of the Act. No rules laying down the procedure to be followed have been brought to my notice. Therefore, in my opinion, the procedure to be followed in the High Court while dealing

with the objections would be the High Court of Himachal Pradesh Original Side Rules. Rule 18 of these rules provides that the Civil Procedure Code shall apply to all proceedings on the original side except to the extent otherwise provided for in the rules.

The High Court of Himachal Pradesh has been set up under the State of Himachal Pradesh Act, 1970. Section 25 thereof provides that practice and procedure in the High Court shall be the same which was applicable in the High Court of Delhi prior to 25th January, 1971. In **Asa Singh Kochhar and another Vs. Darshan Singh Kochhar and others 1976 ILR HP 551,** the Hon'ble court held that the provision of a self correcting procedure adopted by providing an intra court appeal in the High Court falls within the meaning of "practice and procedure" adopted for the purposes of trying a particular cause on the original side.

In **M/s Jaipur Mineral Development Syndicate, Jaipur Vs. The Commr. Of I.-T., New Delhi, AIR 1977 SC 1348** the Apex Court held as follows:-

> "5. x x x x x x x x. There is nothing in any of the provisions of the Act which, either expressly or by necessary implication, stands in the way of the High Court from passing an order for disposal of the

> reference on merits. The courts have power, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice. x x x x x x x x x x x x x x x x x x x x x x x x x."

Reliance is placed by Mr. Rana on the judgment of the Apex Court in **Patel Narshi Thakershi and others Vs. Pradyumansinghji Arjunsinghji AIR 1970 SC 1273** in which it has been held that the power to review is not an inherent power. It must be conferred by law either specifically or necessary implication. This judgment has no application to the facts of this case because the question before the Apex Court was whether the State Government had the power to review its own order. This was not a case of judicial review. Mr. Rana has also relied upon a judgment of Orissa High Court reported in **Food Corporations of India Vs. Bibhutibhusan Patra and others 1987(2) Arbitration Law Reporter, 222,** wherein it has been held that there is no power of review under the Arbitration Act. However, I am not in agreement with this judgment. Further more, this judgment has not taken into consideration the earlier

view of the Orissa High Court in **State and others Vs. Dandasi Sahoo, AIR 1982 Orissa 239,** wherein it held that court had the power of review, in case arising under the Arbitration Act, 1940.

I am of the firm view that any judicial authority has the inherent power to correct its own errors or mistake. If the error is patent, the court shall always have the power to review such an error. To hold otherwise would militate against the principles of justice. In the present case this court had passed a detailed order accepting the plea of the Board and negatived the claim of the contractor and had specifically held that in view of the judgment in M/s Hydel Construction supra the arbitrator had no jurisdiction to award escalation on the basis of the notification dated 3.6.1995. Now all the claims made by the Arbitrator in this regard were set aside. However, in the aforesaid judgment nothing specific was stated about claim No. 2 in Arbitration Case No. 2 of 2002. It is not disputed that claim No. 2 squarely falls under the same heading. In this very case the award of the arbitrator granting escalation in accordance with notification dated 3.6.1995 has been set aside in respect of claims No. 3 & 4. It is apparent that while dealing with

Arbitration Case No. 2 of 2002 this court by oversight and mistake did not consider the similar arguments addressed in respect of claim No. 2. This was by oversight and is an error apparent on the face of record. In fact it is more in the nature of clerical mistake since no fresh decision had to be taken.

The petition filed by the petitioner is allowed to the aforesaid extent and in Arbitration Case No. 2 of 2002 the award of the Arbitrator under Claim No. 2 awarding Rs. 50,11,087/- is set aside. However, the review petition insofar as it relates to clarification of interest is rejected. The directions given by me in the main judgment in this regard are absolutely clear and call for no clarification.

The review application is allowed in the aforesaid terms. No order as to costs.

September 21, 2007(K) (Deepak Gupta), J.